Public Prosecutor v Chibuike Reginald Ukaegbu (W/Nigeria)

HIGH COURT (SHAH ALAM) — CRIMINAL TRIAL NO 45A-249–10 OF 2012
ZULKIFLI BAKAR J
29 MARCH 2016

Evidence — Agent provocateur — Whether informer was agent provocateur — Accused on drug trafficking charge contended prosecution's failure to call informer to testify was fatal as informer played role of agent provocateur — Whether prosecution's evidence showed informer merely introduced accused (as seller of cocaine) to undercover policeman posing as buyer and left the scene — Whether informer did not play any role in negotiating amount of drug to be bought or its price — Whether failure to call informer did not create gap in prosecution's case or attract application of adverse inference under s 114(g) of the Evidence Act 1950 — Whether accused's defence bare denial and failed to cast reasonable doubt on prosecution's case — Whether prosecution proved case beyond reasonable doubt

The accused was charged in the High Court with trafficking in 469.2g of cocaine, an offence under s 39B(1)(a) of the Dangerous Drugs Act 1952 which carried the mandatory death penalty on conviction. According to the prosecution's evidence, an informer told an undercover police officer ('PW3') who was posing as a buyer for cocaine that the accused sold the drug. The informer arranged for PW3 to meet the accused at a restaurant and then left the scene, leaving the other two to discuss the details of the sale and purchase of the cocaine. Once the quantity and price were agreed, PW3 told the accused he wanted to see the drug before making payment. The accused took him to a car parked nearby and while they were in the car, the accused showed PW3 the cocaine kept in a bag. PW3 then told the accused to wait in the car while he went to get the money but as he walked away he gave a pre-arranged signal to a police team that was lying in ambush and they moved in and arrested the accused and recovered the cocaine. Initially, the accused locked himself in the car and refused to come out but yielded when the police team attempted to break the car's window. The government chemist confirmed that the amount of drugs found in the bag was 469.2g of cocaine. Finding that a prima facie case had been proved at the end of the prosecution's case, the court called on the accused to make his defence. The accused contended that he was merely delivering the bag (which he did not then know contained cocaine) to PW3 as requested by a person named 'John' who was allegedly PW3's friend. The accused claimed his cellphone, which was seized by the police upon his arrest, contained a record of calls between himself, PW3 and 'John' pertaining to the delivery of the bag but the failure of the investigating officer of the case ('PW6')

to thoroughly investigate the call records and the existence of 'John' had deprived him of a fair trial. The accused also contended that the prosecution's failure to call the informer to testify was fatal as the informer had played the role of an agent provocateur by negotiating and settling all matters concerning the sale and purchase of the cocaine even before PW3 had met with the accused.

Held, finding the accused guilty of the charge and sentencing him to death:

(1) There was direct evidence before the court that both the accused and PW3 were involved in a sale and purchase transaction of the cocaine. The court found the accused had actual custody, control and knowledge of the cocaine and that he had trafficked in the drug by transporting it and then agreeing to sell it to PW3. The accused's reaction in refusing to open the car door when told to do so by the police party showed his guilty knowledge, his attempt to avoid arrest and his 'mens rea possession' of the cocaine (see paras 23, 27 & 29–31).

(2) The informer had not taken on the mantle of an agent provocateur. He left the scene after introducing PW3 to the accused and the quantity and price of the cocaine were fixed as a result of discussions and negotiations between PW3 and the accused. The informer was not involved. Merely because the informer had earlier discussed with the accused and found him a 'buyer' for the drug did not mean the informer had acted as an agent provocateur. There was no necessity for the prosecution to have called and/or offered him as a witness in this case because with the evidence available, there was no gap in the prosecution's case and it did not attract the application of s 114(g) of the Evidence Act 1950 (see paras 37, 41 & 43).

(3) The court found that 'John' was a fictitious character created by the accused in his sham defence. PW6 testified that she wanted to carry out the investigation regarding 'John' but could not do so due to lack of information provided by the accused. At the very least, the accused should have provided 'John's' full name or address to enable PW6 to investigate further. There was no evidence to show PW6 had deliberately omitted in her task to investigate the material aspects of the accused's story. PW6 had explained every effort she had carried out as an investigating officer for the case and she had done sufficiently to investigate every aspect. Hence, the accused was not deprived of a fair trial (see paras 48 & 50).

(4) The defence failed to create a reasonable doubt in the prosecution's case. The court could not find any possible doubt in the accused's tailored defence that he did not have knowledge about the cocaine in the bag. His mere denial of knowledge was seen as a fanciful doubt, not a reasonable one, which was deemed as not a credible defence. The accused's story was

not at all consistent with innocence. There was no evidence to support his story that he had met PW3 before the eventful day; there was no record of PW3's number in the accused's phone call log; why did the accused not bring the bag straight away to PW3 in the restaurant instead of they having to go over to the car in the parking lot to see the bag; why did 'John' not deliver the bag to PW3 himself on his motorcycle which was easier and faster than asking the accused to send it by car; and why did the accused not explain the purpose and function of the weighing scale that was found inside the car. The accused's story was incapable of being believed. The court was satisfied the prosecution had proven its case beyond reasonable doubt (see paras 56, 59 & 62).

[Bahasa Malaysia summary

Tertuduh dipertuduh di Mahkamah Tinggi atas pertuduhan mengedar 469.2g kokain, satu kesalahan di bawah s 39B(1)(a) Akta Dadah Berbahaya 1952 yang membawa hukuman gantung sampai mati jika disabitkan. Menurut keterangan pihak pendakwaan, seorang pemberi maklumat memaklumkan pegawai polis yang menyamar ('PW3') sebagai pembeli kokain bahawa tertuduh menjual dadah. Pemberi maklumat mengaturkan perjumpaan antara PW3 dengan tertuduh di sebuah restoran dan meninggalkan tempat tersebut untuk kedua-dua mereka berbincang tentang butir-butir jual beli kokain. Apabila kuantiti dan harga disetujui, PW3 memaklumkan tertuduh bahawa dia ingin melihat dadah tersebut sebelum membuat bayaran. Tertuduh membawanya ke sebuah kereta yang diletakkan berdekatan dan semasa mereka dalam kereta, tertuduh menunjukkan PW3 kokain yang disimpan dalam beg. PW3 kemudian menyuruh tertuduh tunggu di dalam kereta sementara dia mengambil wang tetapi ketika berlalu pergi, dia memberi isyarat kepada pasukan polis serang hendap dan mereka bergerak lantas menangkap tertuduh dan merampas kokain. Pada awalnya, tertuduh mengunci dirinya di dalam kereta dan enggan keluar tetapi menyerah kalah apabila pasukan polis cuba memecahkan tingkap kereta. Ahli kimia kerajaan mengesahkan bahawa jumlah dadah yang dijumpai dalam beg adalah 469.2g kokain. Setelah mendapati bahawa satu kes prima facie telah dibuktikan di akhir kes pendakwaan, mahkamah memanggil tertuduh membela diri. Tertuduh menyatakan dia sekadar menyerahkan beg tersebut (yang tidak diketahuinya mengandungi kokain) kepada PW3 seperti yang diminta oleh seorang yang bernama 'John' yang kononnya kawan PW3. Tertuduh menyatakan lagi bahawa telefon bimbitnya, yang dirampas oleh polis semasa tangkapannya, mempunyai rekod panggilan antara dirinya, PW3 dan John berkenaan penyerahan beg tersebut tetapi kegagalan pegawai penyiasat kes ('PW6') untuk menyiasat rekod panggilan dengan betul dan kewujudan John telah menafikan tertuduh akan perbicaraan adil. Tertuduh juga menghujahkan bahawa kegagalan pihak pendakwaan memanggil pemberi maklumat untuk memberi keterangan menjejaskannya kerana pemberi maklumat memainkan peranan sebagai ejen perangkap dengan berurusan dan menyelesaikan hal-hal tentang

jual beli kokain sebelum PW3 bertemu dengan tertuduh. A

Diputuskan, mendapati tertuduh bersalah atas pertuduhan dan menjatuhkan hukuman mati:

(1) Tiada keterangan langsung di mahkamah bahawa tertuduh dan PW3 terlibat dengan transaksi jual beli kokain. Mahkamah mendapati tertuduh mempunyai milikan, kawalan dan pengetahuan tentang kokain tersebut dan bahawa dia mengedar dadah tersebut dengan membawanya dan kemudian bersetuju menjualnya kepada PW3. Reaksi tertuduh yang enggan membuka pintu apabila disuruh oleh pihak polis menunjukkan pengetahuan bersalahnya, cubaannya untuk mengelak daripada ditangkap dan 'mens rea milikan' kokain (lihat perenggan 23, 27 & 29–31). B C

(2) Pemberi maklumat tidak berperanan sebagai ejen perangkap. Dia meninggalkan tempat tersebut selepas memperkenalkan PW3 kepada tertuduh dan kuantiti dan harga kokain ditetapkan berikutan perbincangan dan rundingan antara PW3 dan tertuduh. Pemberi maklumat tidak terlibat. Hanya kerana pemberi maklumat telah berunding dengan tertuduh terlebih dahulu dan menjumpai pembeli dadah tersebut tidak bermaksud pemberi maklumat telah bertindak sebagai ejen perangkap. Tiada keperluan untuk pihak pendakwaan memanggil atau menawarkannya sebagai saksi dalam kes ini kerana berdasarkan keterangan sedia ada, tiada kelompongan dalam kes pendakwaan dan ini tidak membangkitkan pemakaian s 114(g) Akta Keterangan 1950 (lihat perenggan 37, 41 & 43). D E F

(3) Mahkamah mendapati bahawa 'John' adalah watak yang direka oleh tertuduh dalam pembelaannya yang dipalsukan. PW6 memberi keterangan bahawa dia ingin menjalankan penyiasatan berkenaan 'John' tetapi tidak berbuat demikian kerana kurang maklumat oleh tertuduh. Paling tidak, tertuduh sepatutnya memperuntukkan nama penuh atau alamat 'John' untuk membolehkan PW6 membuat siasatan lanjut. Tiada keterangan yang menunjukkan PW6 telah, secara sengaja, melakukan ketinggalan dalam tanggungjawabnya menyiasat aspek-aspek material dalam cerita tertuduh. PW6 telah menerangkan segala usaha yang diambilnya sebagai pegawai penyiasat kes dan dia telah menyiasat setiap aspek secukupnya. Oleh itu, tertuduh tidak dinafikan satu perbicaraan yang adil (lihat perenggan 48 & 50). G H

(4) Pihak pembelaan gagal membangkitkan keraguan munasabah dalam kes pihak pendakwaan. Mahkamah tidak boleh menjumpai apa-apa keraguan yang mungkin dalam pembelaan rekaan tertuduh bahawa dia tidak mempunyai pengetahuan tentang kokain dalam beg tersebut. Penafian semata-mata akan pengetahuan dilihat sebagai keraguan penuh khayalan, bukan satu yang munasabah, yang dianggap bukan satu I

pembelaan kredibel. Kisah pembelaan tidak selari dengan ketidakbersalahannya. Tiada keterangan yang menyokong pembelaannya bahawa dia bertemu PW3 sebelum hari tersebut; tiada rekod tentang nombor PW3 dalam log panggilan telefon tertuduh; kenapa tertuduh tidak membawa beg tersebut kepada PW3 di restoran dan sebaliknya mereka perlu pergi ke kereta di tempat letak kereta untuk melihat beg; mengapa 'John' tidak menyerahkan beg kepada PW3 sendiri dengan motosikalnya yang lebih senang dan cepat berbanding meminta tertuduh menghantarnya dengan kereta; dan mengapa tertuduh tidak menerangkan tujuan dan fungsi skala timbangan yang dijumpai dalam keretanya. Pembelaan tertuduh sukar dipercayai. Mahkamah berpuas hati bahawa pihak pendakwaan berjaya membuktikan kesnya melampaui keraguan munasabah (lihat perenggan 56, 59 & 62).]

Notes

For cases on whether informer was agent provocateur, see 7(1) *Mallal's Digest* (5th Ed, 2015) paras 622–627.

Cases referred to

Balachandran v PP [2005] 2 MLJ 301; [2005] 1 CLJ 85, FC (refd)
Ganapathy a/l Rengasamy v PP [1998] 2 MLJ 577, FC (refd)
Lee Kwan Woh v PP [2009] 5 MLJ 301, FC (refd)
Looi Kow Chai & Anor v PP [2003] 2 MLJ 65, CA (refd)
Modjtaba Hosseinzadeh Majid v PP and another appeal [2016] 2 MLJ 284; [2015] 1 LNS 434, CA (folld)
Mohamad Radhi bin Yaakob v PP [1991] 3 MLJ 169, SC (folld)
Nasarudin bin Mohd Nopiah lwn Pendakwa Raya [2015] 1 MLJ 856, CA (refd)
Ooi Choo Hock v PP [2014] 2 MLJ 200; [2014] 3 CLJ 239, CA (refd)
PP v Lam San [1991] 3 MLJ 426, SC (refd)
PP v Mansor bin Mohd Rashid & Anor [1996] 3 MLJ 560, FC (refd)
PP v Mohamed Halipah [1982] 1 MLJ 155 (folld)
PP v Mohd Farid bin Mohd Sukis & Anor [2002] 3 MLJ 401, HC (refd)
Pang Chee Meng v PP [1992] 1 MLJ 137, SC (refd)
Pius Emmanuel David v PP [2016] 1 MLJ 233, CA (refd)
R v Birtles [1969] 1 WLR 1047 (refd)
Ti Chuee Hiang v PP [1995] 2 MLJ 433, SC (refd)
Wan Marzuki bin Wan Abdullah v PP [2008] MLJU 285; [2008] 4 CLJ 631, CA (refd)
Wan Yurillhami bin Wan Yaacob & Anor v PP [2010] 1 MLJ 749, FC (refd)

Legislation referred to

Dangerous Drugs Act 1952 ss 2, 40A(1), First Schedule
Evidence Act 1950 s 114(g)

Norhani bt Mohamad Adzhar (Deputy Public Prosecutor, Attorney General's Chambers) for the plaintiff.
Sangeet Kaur Deo (Karpal Singh & Co) for the defendant.

Zulkifli Bakar J:

INTRODUCTION

[1] The accused was charged and tried as follows:

> Bahawa kamu pada 24 Februari 2012, jam lebih kurang 2.50 petang, bertempat di kawasan letak kereta bahagian luar, Kompleks Beli Belah Jaya Jusco Bukit Raja, Bandar Baru Klang, di dalam daerah Sepang, di dalam Negeri Selangor Darul Ehsan, telah memperedarkan dadah berbahaya Cocaine seberat 469.2g. Oleh yang demikian, kamu telah melakukan satu kesalahan di bawah s 39B(1)(a) Akta Dadah Berbahaya 1952 yang boleh dihukum di bawah s 39B(2) Akta yang sama.

[2] The accused claimed trial.

CASE FOR THE PROSECUTION

[3] In this trial, the prosecution had called seven witnesses and a prima facie case was proven against the accused.

[4] The significant part of this case is centred on the evidence of the agent provocateur, Sarjan Govindasamy a/l Raju ('PW3'). ASP Balachandran ('PW5') who had obtained information from an informer, on 24 February 2012 at about 11.45am instructed PW3 to be an agent provocateur to act as a buyer to purchase cocaine from a suspect, a Negro male known as 'IKE'. PW5 gave the briefing for the operation to both PW3 and Insp Gan Chee Liang ('PW4') to nab the suspect. The suspect 'IKE', subsequently after arrest, was identified as the accused.

[5] At around 1.30pm on the material day, PW5 introduced the informer to PW3 at a Mamak Shop in Bandar Baru Klang. During the meeting, it was gathered that the accused was selling cocaine at the price of RM90,000 per kg.

[6] At about 1.50pm, PW3 and the informer departed from the Mamak shop to Jaya Jusco Shopping Complex, Bandar Baru Klang. Approximately at about 2pm, they arrived at McDonald's Restaurant inside the shopping complex.

[7] At around 2.30pm, the accused arrived at the McDonald's Restaurant. He approached and greeted the informer who was with PW3. They spoke in

English language. Subsequently, PW3 was introduced to the accused by the informer as the buyer and then the informer left PW3 and the accused.

[8] PW3 communicated with the accused by using an identity of 'Sam'. PW3 and the accused had a discussion about the stock and price of the cocaine. The stock available at that moment was only 1kg of cocaine, as told by the accused. After discussions and negotiations, the accused agreed to sell the cocaine to PW3 at RM86,000 per kg.

[9] However, PW3 made a request to the accused to check on the cocaine before making payment. The accused brought PW3 to his Perodua Viva car bearing registration No CCH 3445 parked at the parking area of the shopping complex at about 2.40pm. The accused invited PW3 to enter the car where the accused sat at driver seat while PW3 sat at the front passenger seat beside the accused.

[10] The accused took out a blue bag with the wordings of 'Daniel Hechter' ('P25') from underneath his seat and passed it to PW3. PW3 opened P25 and found a red plastic packet ('P26') which he saw a transparent plastic packet containing white powdery substance ('P27'). According to PW3, he suspected P27 as cocaine based on his experience.

[11] PW3 placed back the cocaine inside P25 and told the accused that he wanted to go to take the money and would come back to the Viva car to make payment of RM86,000 for the purchase of the said 1kg of cocaine. The transaction between the accused and PW3 inside the accused's car lasted for about five minutes

[12] While walking away from the car, PW3 gave the pre-arranged signal. Upon seeing the pre-arranged signal given by PW3 ie taking out his handphone and scratching his head, PW4 led a police team to apprehend the accused who was waiting for PW3 inside the car.

[13] The accused who locked himself in the car at first refused to open the car door. PW4 and his team attempted to smash the car window of the driver's side. Nevertheless, the accused unlocked the door and alighted from the car before they managed to break the car window. In short, the accused was caught red-handed while the cocaine was in his custody inside the car at that material time.

[14] After the accused was cautioned, PW4 conducted body search of the accused as well as search of the car. As a result of the search, PW4 found P25 at the front passenger seat. A white package marked 'KLIA Shopping' ('P28') which contained a box with 'Electronic Kitchen Sale' ('P29') with a weighing

scale ('P30') inside it was also found but underneath the said front passenger seat. PW4 further carried out a kit Scott reagent test on the powdery substance ('P27') and confirmed to be positive of cocaine.

[15] PW4 took custody of all the items seized as in search list ('P15–P19') and subsequently handed over all the exhibits to the investigating officer of this case, Insp Raja An Nurul Maya ('PW6') on 24 February 2012 at around 8.30pm. PW6 took custody of all the exhibits but at this trial could not produce two of the exhibits. PW6 had lodged a police report Bk Sentosa/005138/15 ('P50') regarding the two exhibits which were lost in her custody as follows:

(a) one student card of the accused; and

(b) one silver necklace with green stone locket;

These two exhibits are now missing because PW6 had misplaced these items while moving from her previous office (Jabatan Siasatan Jenayah Narkotik, IPK Selangor) to the new office (Pusat Latihan Polis Bukit Sentosa) in April 2013.

FINDINGS AT THE CLOSE OF THE PROSECUTION'S CASE

Identification of the drugs

[16] At about 8am on 28 February 2012, PW6 sent P27 to Jabatan Kimia Malaysia Petaling Jaya for analysis. On the same day, the chemist, En Zulkfeli bin Mohd Edin ('PW7') issued an acknowledgement receipt ('P21') to PW6.

[17] PW7 conducted homogenisation of the powdery substances. He then carried out three tests on the homogenised powder, namely, Scott Test, Gas Chromatography Mass Spectrometer ('GCMS') and Gas Chromatography — Flame Ionization Detector ('GC-FID').

(a) PW7 confirmed his result of the analysis as stated in the chemist report ('P23') prepared by him;

(b) the result indicated that there was 469.2g of cocaine as specified in the charge against the accused. The chemist's evidence had successfully identified the type and nature of the drugs; and

(c) PW7 returned the exhibits by hand to PW6 on 8 August 2012 at 3pm.

[18] The Supreme Court case of *Public Prosecutor v Lam San* [1991] 3 MLJ 426 decided as follows:

(1) In regard to the evidence of the chemist, unless the evidence is so inherently incredible that no reasonable person can believe it to be true, it should be accepted

as prima facie evidence. As long as the evidence is credible, there is no necessity for the chemist to show in detail what he did in his laboratory. The evidence of the chemist in this case was more than sufficient as basis to call for the defence, granted that all the other ingredients of the offence had been successfully proved.

[19] This court accepted the unchallenged evidence of the chemist ('PW7') and his report ('P23') and ruled that cocaine is a dangerous drug as defined under s 2 and comprised in the First Schedule of the Dangerous Drugs Act 1952 (Act 234).

Trafficking of the cocaine

[20] Having considered the submissions by both parties, I have addressed my mind to the issue of 'trafficking' as stated in s 2 of the Dangerous Drugs Act 1952:

> 'trafficking' includes the doing of any of the following acts, that is to say, manufacturing, importing, exporting, keeping, concealing, buying, selling, giving, receiving, storing, administering, transporting, carrying, sending, delivering, procuring, supplying or distributing any dangerous drug otherwise than under the authority of this Act or the regulations made under the Act.

[21] A reference is made to the case of *Public Prosecutor v Mohd Farid bin Mohd Sukis & Anor* [2002] 3 MLJ 401 which explains the proposition of 'trafficking' clearly as follows:

> This provision has been a matter of constant judicial concern. In *Teh Geok Hock v Public Prosecutor* [1989] 3 MLJ 162 it was held that this 'definition' in s 2 of the Act sounds artificial and not according to the ordinary meaning of the word 'trafficking' which is normally understood to mean to trade in, buy or sell, any commodity, albeit often with sinister implication (at p 163). It is clear that s 2 of the Act does not define the word 'trafficking'; it merely 'includes' certain additional acts to what that word means. In *Dilworth & Ors v The Commissioner of Stamps and another appeal* [1899] AC 99 it was held that the word 'include' is very generally used in interpretation clauses in order to enlarge the meaning of words or phrases occurring in the body of the statute; and when it is so used these words or phrases must be construed as comprehending, not only such things as they signify according to their natural import, but also those things which the interpretation clause declares that they shall include. Thus, when it is mentioned that a particular word 'includes' certain things it could mean that the legislature wanted to bring in other matters that would not properly come within the ordinary connotation of the word in question (see *Madras Central Urban Bank Ltd v Corporation of Madras* AIR 1932 Mad 474). The words retain their ordinary meaning. It follows that the words only have extended meaning and do not limit the meaning to the substance of the definition (see *Kantilal Shah v Charity Commissioners* 1975 16 Guj UR 594). The word 'trafficking' in the Act must therefore be given its ordinary meaning. The legal meaning of 'trafficking' as defined in *Black's Law Dictionary* (6th Ed) is:

Trading or dealing in certain goods and commonly used in connection with illegal narcotic sales.

[22] In the instant case, the evidence showed that the accused was arrested right after showing the bag containing the cocaine to PW3. Before that, there was a discussion and negotiation between the accused and PW3 for buying and selling transaction of the cocaine. In the case of *Nasarudin bin Mohd Nopiah lwn Pendakwa Raya* [2015] 1 MLJ 856 which settled the proof of trafficking under s 2 of the Dangerous Drugs Act 1952 when the court said:

> [18] Seterusnya, terdapat juga keterangan jelas dan terus tentang pengedaran dadah mengikut apa yang ditakrifkan di bawah s 2 ADB kerana wujudnya urusan jual beli di antara perayu dan SP3. Keterangan SP3 sebagai agent provocateur adalah kompeten dan telah diterima pakai oleh YA hakim bicara di bawah s 40 ADB. Perjanjian yang dicapai tentang penyerahan dadah yang merupakan inti pati penting untuk membuktikan pengedaran secara jual beli di bawah s 2 ADB telah juga terbukti.

(See also *Wan Marzuki bin Wan Abdullah v Public Prosecutor* [2008] MLJU 285; [2008] 4 CLJ 631.)

[23] Similarly this court decided the same in this case as there was a negotiation on the price of the cocaine between PW3 and the accused and a final price had been concluded. The accused invited PW3 to the car to show him the cocaine which he wanted to sell. Subsequently, PW3 asked the accused to wait for him in the car under pretext to go to collect the money to pay the accused. Thus, it is a direct evidence before this court that both the accused and PW3 were involved in a sale and purchase transaction of dangerous drugs ie cocaine. This court found that the accused has the actual custody control and knowledge of the cocaine and was trafficking the said cocaine by way of agreeing to sell it to PW3.

Agent provocateur ('PW3')

[24] According to PW3, after the negotiation the accused had agreed to sell 1kg of cocaine at a reduced price of RM86,000. In the car, the accused had allowed PW3 to see the drugs in question. Thereafter, PW3 under pretext told the accused that he was going to take the money to pay the accused. PW3 while walking away from the car, gave pre-arranged signal to PW4 to confirm the existence of the drugs and this made PW4 with his team to raid and arrest the accused who was with the drugs inside the car waiting for PW3.

[25] Section 40A(1) of the Dangerous Drugs Act 1952 states that evidence of an agent provocateur shall be admissible as follows:

> Notwithstanding any rule of law or the provisions of this Act or any other written law to the contrary, no agent provocateur shall be presumed to be unworthy of credit by reason only of his having attempted to abet or abetted the commission of an offence by any person under this Act if the attempt to abet or abetment was for the sole purpose of securing evidence against such person.

[26] It is trite law that evidence by the agent provocateur requires no corroboration. In the case of *Public Prosecutor v Mohamed Halipah* [1982] 1 MLJ 155, it was held:

> It is indeed difficult to secure evidence in the normal way where an offence under s 39B of the Ordinance is concerned and the act of the police in resorting to this method of using an agent provocateur, though undesirable, is necessary in circumstances where drug trafficking has become a national issue, which may lead to national crisis. By virtue of s 40A of the Ordinance the evidence of an agent provocateur need no corroboration to found a finding by a court, however, Detective Constable Zainal's evidence was amply corroborated by the evidence of Insp Ariffin and the cautioned statement of the accused.

I totally agreed with Yusod Abdul Rashid J (as he then was) on the above except (*Public Prosecutor v Mohamed Halipah*) as the value of PW3's evidence is highly appreciated after carefully appraised by this court. PW3 had acted as an undercover risking his life to deal with the perpetrator in drug activities The engagement of PW3 in this transaction, as observed from the facts of the case and further corroborated by PW4 and PW5, is indeed acting as an enforcement officer to combat the drug crimes and protect our vulnerable citizens from abuse of drugs. Further, arresting and detaining the accused of this case, who is a stranger to PW3, would not bring any benefit to PW3. Therefore, PW3's evidence is fully accepted by this court (*Public Prosecutor v Mohamed Halipah*).

[27] From the evidence, this is a case of negotiating the price of the drugs to be sold by the accused to PW3 on the material day before the arrest of the accused. The accused had shown the drugs ie cocaine to PW3 inside his car after he had transported them in his car to the shopping complex. This is a direct and straightforward fact, that the accused with full knowledge was transporting and selling the cocaine to PW3, an agent provocateur, ie trafficking in the said dangerous drugs under s 2 of the Dangerous Drugs Act 1950.

OTHER SUPPORTING EVIDENCES

Mens rea possession of the drugs

[28] The accused agreed to the reduced price and subsequently brought PW3 to check the cocaine in his possession. Then, he took PW3 to his car, showed PW3 the drugs which had agreed to sell to PW3.

[29] When PW4 and his team rushed the car to apprehend the accused, he was occupying the driver's seat. The immediate response or conduct of the accused when instructed by PW4 who had identified himself as police offer to open the door of the car is to refuse to open it. This conduct of the accused can be inferred as guilty knowledge on the part of the accused.

[30] The reaction of the accused in refusing to open the car door equally indicated that he was trying to avoid the arrest. In my considered opinion, an innocent man would have opened the car door without refusal when confronted by the police officer who had identified himself and had nothing to be scared of.

[31] It has been proven by prosecution's evidence that the conduct of the accused in bringing a large quantity of cocaine to sell to PW3 at the shopping complex showed the accused has the 'mens rea possession' of the cocaine. There is direct evidence that the accused knew the nature of the drug ie cocaine and he was selling the drug which is an act of trafficking under the law.

Weighing scale ('P30')

[32] The weighing scale ('P30') was found underneath the front passenger seat. P30 was kept inside a white package marked 'KLIA Shopping' ('P28') which contained a box with 'Electronic Kitchen Sale' ('P29').

[33] What was suspicious was that the purpose of accused bringing along the weighing scale when coming to a shopping complex. In the circumstances, inference can be made that the accused brought the weighing scale to calculate the quantity of the drugs ('cocaine') to be sold to PW3 that day.

Issues raised by the defence counsel at the stage of the prosecution's case

[34] At the stage of the prosecution's case, the defence counsel in its written and oral submissions had raised two issues as follows:

(a) failure of prosecution to call informer who had taken active participation and mantle of an agent provocateur; and

(b) failure of investigation officer to investigate the accused's story thereby had deprived the accused's right to a fair trial.

First issue: failure of prosecution to call informer who had taken active participation and mantle of an agent provocateur

[35] The defence contended that the nature of the drug, the price, the quantity and date of handover had all already be negotiated and thus the alleged transaction had been pre-arranged. This is because PW3 explained that efforts was required to garner the confidence of the seller first in such dealing and as such it is most likely that the informer who had introduced PW3 to the seller had actually negotiated all these matters prior to the meeting on the material day (24 February 2012), and clearly crossed the limit of being merely an informer.

[36] The defence further contended that if it was not the said informer, then there would possibly have been another unknown third party who had negotiated all these and surely this person (informer or third party) had actively participated and acted as an agent provocateur. This informer ought to have been called as a prosecution witness.

[37] In my view, it is essential to consider the facts before this court and decide whether the informer had performed the role of an agent provocateur. The informer in this case had merely acted in introducing PW3 to the accused and the informer then left McDonald's Restaurant after introducing PW3 to the accused. The arguments put forward by the defence counsel is without merit because the stock and the price of RM86,000 per kg was fixed as a result after discussions and negotiations between the accused and PW3. The informer was not involved since he had left them. Merely because the informer had earlier discussed with the accused and found a buyer for the accused for the said drugs (if true), does not mean the informer had acted as an agent provocateur.

[38] In the Federal Court case of *Public Prosecutor v Mansor bin Mohd Rashid & Anor* [1996] 3 MLJ 560, it was decided that the informer did not take the active role and cross the line to become an agent provocateur even he had acted more than in the instant case. It was decided as follows:

> The Act does not define 'informer' and 'agent provocateur'. But the distinction is recognised (see ss 40 and 40A of the Act).
>
> In *Munusamy v Public Prosecutor* [1987] 1 MLJ 492 (SC), Mohd Azmi SCJ (now FCJ) in delivering the judgment of the court, opined (at p 494) that 'whether a person is an informer or has become an active agent provocateur would depend on the facts of each particular case'. In our instant case under appeal though Cholar introduced PW9 to the second respondent and was present when both transactions involving cannabis were struck, there was no evidence that he had done anything apart from being present. It appears obvious that his presence during the negotiation process and the transactions was merely to lend credence to PW9's

intention to purchase the cannabis in the minds of the respondents. In *Namasiyiam & Ors v Public Prosecutor* [1987] 2 MLJ 336, the judgment shows that Francis, the 'informer' (as the police called him throughout the trial) took an active part not only by introducing the agent provocateur to the offenders but also acted as the latter's spokesman and participated in the trap leading to the arrests of the offenders and the seizure of the drugs.

On the particular facts and circumstances of the instant case under appeal, we are of the view that Cholar was not an agent provocateur. But even if he was, there is more than sufficient credible evidence of the respondents' involvement in the negotiation and agreement to sell to PW9 the 902g of cannabis subsequently brought out by the second respondent from room 'K' in the said house.

[39] It is a crystal clear the provision of s 40 of the Dangerous Drugs Act 1952 is enacted to protect the identity of an informer. In my considered view, the informer must be protected during the trial at all costs because the informer and his family will be exposed to unexpected danger and hardship if his or her identity is revealed to the accused or its mastermind or the drugs syndicate. It is even more severe to the extent of risking the informer's life. If an informer loses the shield of protection, easily and without reasonable safeguards by the court, it will discourage citizens to come forward as informer to assist the enforcement agencies to curb the crimes of drug trafficking and abusive use of drugs. The leading case to note is *R v Birtles* [1969] 1 WLR 1047:

Before leaving this case, the court would like to say a word about the use which, as the cases coming before the court reveal, is being made of informers. The court of course recognises that, disagreeable at it may seem to some people, the police must be able in certain cases to make use of informers, and further — and this is really a corollary — that within certain limits such informers should be protected. At the same time, unless the use made of informers is kept within strict limits, grave injustice may result. In the first place, it is important that the court of trial should not be misled.

[40] In the light of the protection of the informer of this case, I opined that it has to be set against the right of the accused as the informer has played no role in relation to the guilt of the accused in this case. The identity of the informer must be protected to avoid any retaliation against him and to let him continue to serve as a source to provide information to the police about the drug dealings. In the case of *Wan Yurillhami bin Wan Yaacob & Anor v Public Prosecutor* [2010] 1 MLJ 749, Federal Court says that:

(2) There was no evidence that Seman had done anything apart from introducing SP7 to the first appellant and being present when the transaction involving the drugs took place. Seman's presence if at all was merely to lend credence of SP7's intention to purchase the drugs in the minds of the appellants. Therefore Seman was not an agent provocateur. The non-calling or the non-offering of the informer by the prosecution had not caused any gap to the prosecution's case as it did not tend to explain the presence of the first appellant other than for the purpose of supplying

the drugs to SP7. Thus, Seman the informer was afforded protection under s 40 of the DDA (see paras 22 & 27).

[41] Therefore, there is no necessity for the prosecution to call and/or offer the informer as witness in this case because with the evidence available it creates no gap to prosecution's case and does not attract the applicability of s 114(g) of the Evidence Act 1950. This is in line with the law and the prosecution's discretion to have choices of witnesses to be called during trial to discharge the burden of proof (see *Ti Chuee Hiang v Public Prosecutor* [1995] 2 MLJ 433).

[42] This court further found that there is no evidence or any possible inference to show the existence of a third party as claimed by the defence counsel. Here the facts disclose plainly that only the informer who was present and introduced PW3 who wanted to buy the drugs from the accused who had wanted to sell the drugs. As an introducer, he ought to know the place of meeting where he has to be present to introduce PW3 who was a stranger to the accused. As for the quoted price of RM90,000 per kg, it is not wrong to infer that the informer could have met the accused and found out about the price from the accused in order to find a buyer who is interested to purchase the drugs from the accused at the price set by the accused. But it is not right to suggest that PW3 have met the accused earlier and therefore the contention that there was a pre-arranged amount of drugs and its price between accused, PW3 and informer is without merit.

[43] More importantly, the informer did not take part in the negotiation of price between PW3 and the accused and accordingly had left the scene when the accused brought PW3 to see the drugs. This means that the informer played a very little role and has no active participation in this case. The informer had therefore cannot be said to have taken the mantle of an agent provocateur.

Second issue: failure of investigation officer ('PW6') to investigate the accused's story thereby it deprived the accused's right to a fair trial.

[44] During cross-examination, the defence counsel did put to the prosecution's witnesses the defence's version as follows:

(a) the bag ('P25') was given to the accused by 'John' at the chendol stall in Meru Klang to pass to PW3 ('John's friend');

(b) PW3 had called the accused to ask where he was during the material day; and

(c) the accused had also called PW3 when he had trouble in entering the car park of the shopping complex.

[45] The accused handed over his cell phone to a Chinese police officer

('Insp Kho Chee Chua') who was neither called nor offered by the prosecution. The accused also gave four phone numbers (three belong to 'John' and one belongs to 'John's friend') to the police which PW6 was aware.

[46] It is to be noted that PW6 's evidences are as follows:

(a) the accused failed to give the proper information or details pertaining to full name or I/C number or address of 'John'. It was contended that the accused gave four phone numbers (three are said to belong to 'John' and one belongs to PW3 ('John's friend')). PW6 had investigated by checking the numbers in the cell phone but those numbers were not identifiable. PW6 in her investigations could not locate or trace 'John' based on the limited information given by the accused which makes this court to believe reasonably that 'John' is just a fictitious character created by the accused himself. In the case of *Pius Emmanuel David v Public Prosecutor* [2016] 1 MLJ 233, Aziah Ali JCA said:

> [42] It was further submitted that PW5 had failed to investigate 'Jeff' that was mentioned by the appellant in his cautioned statement exh D1. Learned counsel submitted that the IO ought to have examined the two handphone sim cards recovered from the appellant. We have perused the statement exh D1. Apart from giving the full name of Jeff, no further details were provided about Jeff. The appellant did not inform PW5 about any telephone number or address of Jeff. There is no evidence that the appellant had mentioned 'Jeff' to PW3 at the time he was arrested. He only mentioned 'Jeff' in exh D1 which was recorded about three days after his arrest. If it is true that 'Jeff' existed, the appellant could have and should have given Jeff's telephone number to either PW3 or PW5 at the first available opportunity. We find that the appellant's defence lacked credible evidence that Jeff existed. The appellant's failure to provide relevant information about 'Jeff' for the police to carry out a thorough investigation into the probability of his defence, entitled the learned trial judge to disbelieve him (*Teng Howe Sing v Public Prosecutor* [2009] 3 MLJ 46; [2009] 3 CLJ 733). The trial judge has not erred in finding that the defence is an afterthought. By making this finding, we find that the trial judge has sufficiently met the requirement of the Radhi's direction;

(b) PW6 told the court that the phone numbers given by the accused had negative result based on her investigations and hence she could not conduct further investigations on this. PW6 accordingly informed this court that she had compared PW3's phone numbers with the call logs of the accused's phone and found no number belonging to PW3 or any raiding officer in the operation;

(c) PW6 in her evidence said that she did not know the version provided by the accused that two days before the eventful day (22 February 2012), the accused met with 'John' and PW3 at Majestic Target Spare Parts (the

accused's working warehouse). According to her investigations, there was no such occasion. Therefore, it is clearly that the accused has made up this story during this trial;

(d) during cross-examination, the defence counsel has a right to put its case at the earliest possible stage to the prosecution witnesses (see *Ooi Choo Hock v Public Prosecutor* [2014] 2 MLJ 200; [2014] 3 CLJ 239). In this case, defence counsel had asked PW6 in cross-examination whether she had investigated the accused's story of meeting PW3 and 'John' at his working warehouse at Klang Sentosa (Majestic Target Spare Parts). PW6 answered that she did not know about the version of this story. I have considered this and found that there was no evidence to show PW6 had deliberately failed to investigate this information as she was not aware of this. PW6's evidence was also corroborated by PW3 who testified that he only met with the accused for the first time at McDonald's Restaurant through the informer;

(e) PW6 stated that there was no CCTV devices installed at McDonald's Restaurant;

(f) PW6 also explained that she did not collect the fingerprint evidences from the exhibits at the scene because many officers were involved when arresting the accused; and

(g) PW6 testified in respect of investigations of the accused's handphone. PW6 took the statement from Insp Kho Chee Chua on 13 August 2015, a week before PW6 was re-called to give evidence in this trial (26 August 2015). PW6 told the court that Insp Kho did not find any information relevant to this case from the accused's handphone.

[47] Further, in respect of the phone numbers and handphone of the accused, the defence counsel strongly contested on the failure of the prosecution to call Insp Kho as a witness to explain this part of evidence. I found that the failure to call Insp Kho as prosecution's witness in this case did not create any gap in the prosecution's case. PW6 had taken Insp Kho's statement and as the investigating officer of this case, she had informed this court the outcome of her investigations. PW6 confirmed that there was negative result in her investigations in respect of phone numbers and/or handphone. Not only this, PW6 confirmed that there was no contact number of PW3 appeared at the call log of the accused's handphone and this was corroborated by PW3 who testified that he never make any call to the accused

[48] Based on the evidences and facts available, this court had directed its attention to the name of 'John'. According to PW6, she is aware of this and wanted to conduct the investigation regarding 'John' but could not, due to lack of information provided by the accused. This court found that PW6 had not

ignored this and wanted to check on 'John'. This is not a situation of placing the burden of proof on the accused. The onerous duty is always on the prosecution to prove guilt against the accused, and PW6 had done sufficiently to investigate every aspect. It is not the situation of asking the accused to locate 'John' by himself, but at the very least, the accused must provide John's full name or address to find 'John' for PW6 to conduct further investigation. Impossible to say all these basic details were unknown to the accused himself. Then how did the accused contact 'John' to meet him to give the bag ('P25') to be delivered to PW3 as suggested by the defence in cross-examination of PW3 and PW6? Thus, 'John' is just a fictitious character created by the accused in his sham defence. I share the findings of Abang Iskandar Abang Hashim, JCA in the case of *Modjtaba Hosseinzadeh Majid v Public Prosecutor and another appeal* [2016] 2 MLJ 284; [2015] 1 LNS 434, when he said:

> [24] At the end of this exercise, the learned trial judge had come to the conclusion that Abu Dzal was a fictitious person, conveniently created by both the appellants as an afterthought. It was indeed incredible, as was found by the learned trial judge that neither one of the appellants was able to furnish the full name and the basic full particulars of Abu Dzal to the investigating officer. Abu Dzal was supposed to have stayed on the same street as the appellants in Tehran in Iran, and yet they expected the investigating officer to launch a full scale investigations into tracing the so-called Abu Dzal in Iran ...

[49] The defence counsel put to PW3 that on 24 February 2012 the accused had called PW3 for the problem of parking ticket ('P31') to enter the parking place at Jaya Jusco before they met at McDonald's Restaurant. PW3 had testified and this court believed him that he never received such call from the accused.

(a) From the above, I had ruled that evidence of PW3 was accepted by this court. Nevertheless, I had considered this argument as advanced by the defence counsel. The question concerning this is, in the first place what type of situation that made the accused to face difficulties or problems to enter the parking place? It makes no sense that an adult like the accused had to call PW3 to ask for help just because he could not enter the parking place. The accused had been in this country for quite sometimes and he is familiar with the shopping complex which he had driven to without any difficulty to find the place.

[50] To conclude the second issue, I therefore found that there is no evidence showing that PW6 has deliberately omitted in her task to investigate the material aspect of the accused's story. On the contrary, PW6 had explained every effort she did as an investigating officer for this case and I found there is no lack of ingenuity and inventiveness in police investigations like what had happened in the case of *Pang Chee Meng v Public Prosecutor* [1992] 1 MLJ 137. Hence, the accused has not been deprived of a fair trial at this court. I find no

merit in the submission by the defence counsel and conclude that the right of the accused to a fair trial is never being violated (see *Lee Kwan Woh v Public Prosecutor* [2009] 5 MLJ 301).

Prima facie case

[51] At the close of prosecution's case, this court had assessed the evidence of the prosecution to a maximum evaluation. This court is satisfied that the evidence adduced by the prosecution can be overthrown only by evidence in rebuttal and it must prevail if there is no rebuttal by the accused's side (see *Balachandran v Public Prosecutor* [2005] 2 MLJ 301; [2005] 1 CLJ 85).

[52] In *Looi Kow Chai & Anor v Public Prosecutor* [2003] 2 MLJ 65, it is held as follows:

> It therefore follows that there is only one exercise that a judge sitting alone under s 180 of the CPC has to undertake at the close of the prosecution case. He must subject the prosecution evidence to maximum evaluation and to ask himself the question: if I decide to call upon the accused to enter his defence and he elects to remain silent, am I prepared to convict him on the totality of the evidence contained in the prosecution case? If the answer is in the negative then no prima facie case has been made out and the accused would be entitled to an acquittal.

[53] From the facts and evidences before this court, I found a prima facie case of trafficking had been proven against the accused by the prosecution based on the direct evidences of this case. This court is prepared to convict the accused if he remains silent and did not produce any supportive evidence. This court called the accused to enter his defence and the accused was given three alternatives of the method to provide his defence and after consulting his counsel, the accused elected to give evidence under oath for his defence.

THE DEFENCE

[54] In brief, the defence's story is surmised as follows:

(a) on 22 February 2012, two days before the material day specified in the charge, the accused met with 'John' and his friend at the accused's working warehouse in Klang (Majestic Target Spare Parts) because 'John' and his friend (purported to be PW3) was looking for car spare parts. However, they were unable to obtain the spare parts required as they were unable to specify the exact model. After that, they went to a nearby Chinese restaurant and at that time 'John's friend' exchanged his handphone number with the accused;

(b) on the day in question, the accused was given a bag ('P25') by 'John' at a Chendol stall in Meru Klang. At the Chendol Stall, the accused arrived in

his car and agreed to help 'John' who was on his motorbike, to send the bag ('P25') to 'John's friend' at Jaya Jusco, Klang;

(c) the accused explained that he did not ask 'John' what the contents were inside P25 as he was merely doing so for a favour to 'John' as his friend;

(d) the accused then headed to Jusco and received a call from 'John's friend' asking where he was. When he reached Jaya Jusco, the accused called 'John's friend' to come to the car he was driving because the accused had trouble to get into the car park. 'John's friend' explained how to get the parking ticket ('P31') and enter the car park;

(e) once parked the car, the accused called 'John's friend' again and the accused was asked by 'John's friend' to meet him at McDonald's Restaurant in the shopping complex. The accused did as told;

(f) after they met, the accused and 'John's friend' headed to the accused's car. The accused sat at the driver seat while 'John's friend' got into the front passenger seat. 'John's friend' took the bag ('P25') and opened it and then closed it back. Subsequently, 'John's friend' opened the car door and went out from the car leaving P25 at the front passenger's seat. Susbequently, the accused was arrested by a team of plain clothes police officers;

(g) the accused also stated in his evidence that he had led the police to his house to conduct a search and there was no incriminating material found there. The accused also gave his handphone and four phone numbers (three belonged to 'John' and one belonged to 'John's friend') to Insp Kho; and

(h) the accused testified that PW3 is the so-called 'John's friend'.

[55] In the defence counsel's submission, same issues as at the stage of prosecution's case were submitted and emphasised. The defence counsel urged this court to reconsider the issues as follows:

(a) informer who took the mantle of an agent provocateur was not called as witness by prosecution; and

(b) the accused's version was not investigated by the police and this had deprived his right to a fair trial.

FINDINGS AT THE CLOSE OF DEFENCE'S CASE

[56] This court has considered the defence adequately and revisited the evidence of the prosecution in order to see whether the prosecution has proven their case beyond reasonable doubt in the light of the defence's case:

(a) in my considered judgment at this stage, the defence bears the burden to cast a reasonable doubt on the prosecution's case. As for the evidence by

the defence that PW3 and the accused had actually met before the eventful day, there is no iota of evidence to support the accused's story. If accused had actually met PW3 before that day, there is no necessity for the informer to introduce PW3 to the accused on that day. Further there was no record of PW3's phone number in the accused's phone call log. The accused's story is incapable to be believed;

(b) the accused claimed that he took the bag ('P25') from 'John' and assisted 'John' to send P25 to PW3, who was waiting for him at McDonald's Restaurant. If that is true why didn't the accused bring the bag ('P25') to PW3 straight away into the restaurant? Why did he choose to see PW3 and then bring him over to his car at the parking space and showed him the bag?

(c) from the accused's evidence, it has an indication that 'John' had framed him to carry and deliver the drugs ('cocaine') worth RM90,000 to PW3. To my mind, 'John' is a figment of accused's imagination and the transaction as claimed by the accused is incredibly false. 'John' would and could have delivered the goods to PW3 himself on motorcycle which is easier and faster rather than to ask the accused to send by car with the trouble of traffic conditions (admitted by the accused in his evidence). The truth is 'John' never exist and a fictitious character; and

(d) the accused did not explain to this court the purpose and function of the weighing scale ('P30') which was found inside the car driven by him. Given the facts available in this case, I maintain my earlier findings on the reasonable inference to be drawn in the circumstances.

[57] I have considered whether the defence has succeeded merely to cast a reasonable doubt to the prosecution's case even though I am not convince with the defence's version. I am guided by the principle of the case of *Mohamad Radhi bin Yaakob v Public Prosecutor* [1991] 3 MLJ 169 as follows:

> We are of the view that whenever a criminal case is decided on the basis of the truth of the prosecution's case as against the falsity of the defence story, a trial judge must in accordance with the principle laid down in *Mat v Public Prosecutor* [1963] MLJ 263 go one step further before convicting the accused by giving due consideration as to why the defence story, though could not be believed, did not raise a reasonable doubt in the prosecution case. Thus, even though a judge does not accept or believe the accused's explanation, the accused must not be convicted until the court is satisfied for sufficient reason that such explanation does not cast a reasonable doubt in the prosecution case. To satisfy this test it is not so much the words used by the judge, but rather the actual application of the test to the facts of the case that matters. In this case, we found that the learned trial judge offered practically no reason why the defence, notwithstanding its falsity and unconvincing nature, had failed to cast reasonable doubt in the prosecution case, other than to state by way of lip service the duty placed by the law on the defence to earn an acquittal.

[58] In the case of *Ganapathy a/l Rengasamy v Public Prosecutor* [1998] 2 MLJ 577, the Federal Court adopted the position of *Radhi* and held as follows:

> It needs to be remembered that however weak a defence may be, trial judges being judges of both fact and law should not just brush aside the defence on the basis that the prosecution witnesses are to be believed and not the defence. Where the law casts the onus of giving an explanation upon an accused person, and the explanation is given, which is consistent with innocence, the court is duty bound to consider whether it might reasonably be true, although not convinced of its truth. On the issue of the court's duty to consider the defence, the age old decision in *Mat v Public Prosecutor* [1963] MLJ 263 is still good law today as it was then. This was followed by the Supreme Court in *Mohamad Radhi bin Yaakob v Public Prosecutor* [1991] 3 MLJ 169.

[59] This court had directed its mind to the defence's story and tested the facts to the principle stated in the cases cited above and found the defence had failed to create a reasonable doubt on the prosecution's case. This court cannot find any possible doubt in his tailored defence that the accused did not have knowledge about the drugs ('cocaine') in the bag ('P25'). The accused's mere denial of knowledge is seen as a fanciful doubt, not a reasonable one which is deemed as not a credible defence. The accused's story in his defence as elaborated earlier in this judgment is not consistent with his innocence at all.

[60] With regards to the issues submitted at the close of prosecution's case and re-submitted by the defence counsel at the end of the defence's case, I maintained my stand as stated clearly in the earlier part of this judgment after I have assessed the evidences as a whole.

[61] As for another example of fanciful doubt raised by the accused in his defence is that, the accused told this court that he came to Malaysia to play football since he is a professional footballer but during cross-examination by the prosecution, the accused testified that he did not know what is 'FAM' (Football Association of Malaysia). Conversely, at the stage of examination-in-chief by the defence counsel, he said that he had worked hard to enter FAM. This is an obvious falsity displayed by the accused and it appeared to this court that the accused was trapped in his own web of lies.

[62] After assessing thoroughly the defence of the accused and the prosecution's case, this court is satisfied that the prosecution has proven its case beyond reasonable doubt on the charge against the accused with cogent and ample evidence adduced.

CONCLUSION

[63] For the foregoing reasons, this court found the accused guilty of the offence as charged and hence sentenced him to the mandatory death sentence.

Accused found guilty of charge and sentenced to death.

Reported by Ashok Kumar